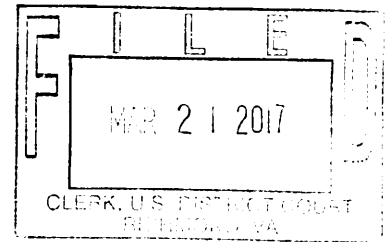


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



JAMES L. JACK,

Plaintiff,

v.

Civil Action No. 3:16CV316

MICHAEL L. CHAPMAN, et al.,

Defendants.

MEMORANDUM OPINION

James L. Jack, a Virginia inmate proceeding pro se and in forma pauperis, filed this 42 U.S.C. § 1983 action. By Memorandum Opinion and Order entered on September 15, 2016, the Court dismissed the action without prejudice because Jack failed to comply with the Court's directive to pay an initial partial filing fee or state under penalty of perjury that he did not have sufficient assets to pay. (ECF Nos. 7, 8.) The same day as his case was dismissed, Jack wrote to the Court and indicated that he had been transferred to Wallens Ridge State Prison so he did not receive the Memorandum Order and then stated that he lacked the money to pay. (ECF No. 9.) Because the letter was received the same day as the Court dismissed the action, and because it appeared that Jack was interested in pursuing the action, the Court vacated the September 15, 2016 Memorandum Opinion and Order and continued processing the action. (ECF

Nos. 10, 11.) The Clerk, however, did not update Jack's address to Wallens Ridge State Prison at that time.

By Memorandum Order entered on January 11, 2017, the Court directed Jack to file a particularized complaint within fourteen days of the date of entry thereof. (ECF No. 13.) Because Jack failed to file a particularized complaint, by Memorandum Opinion and Order entered on February 9, 2017, the Court again dismissed the action. (ECF Nos. 14, 15.)

On March 9, 2017, the Court received a letter from Jack noting an appeal. (ECF No. 16.) In that letter Jack indicates that "he did not receive notice to file a particularized complaint until after the time had expired because it was sent to River North Correctional Ctr. [and] the Plaintiff has been transferred to Wallens Ridge State Prison." (Letter 1 (capitalization corrected).) Jack also indicates that on February 3, 2017, he attempted to file a motion seek for extension of time in which to file "motions to support his claims" but that he sent the motion to the wrong address. (Id. Ex. 2, at 1; Letter 1.) Because Jack filed his Letter on March 5, 2017, within twenty-eight days of the Memorandum Opinion and Order dismissing the action, the Court construes this Letter as a motion filed pursuant to Federal Rule of Civil Procedure 59(e) ("Rule 59(e) Motion").

The United States Court of Appeals for the Fourth Circuit recognizes three grounds for relief under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing Weyerhaeuser Corp. v. Koppers Co., 771 F. Supp. 1406, 1419 (D. Md. 1991); Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990)). The Court construes Jack to argue that reopening the action will prevent manifest injustice. Because the Clerk mailed the January 11, 2017 Memorandum Order directing Jack to file a particularized complaint to the incorrect address, the Court will grant the Rule 59(e) Motion. The February 9, 2017 Memorandum Opinion and Order will be vacated. The Clerk will be directed to reopen the action. The Clerk will also be directed to update the docket to reflect that Jack is now housed at Wallens Ridge State Prison.

Jack will be directed to file a particularized complaint within fourteen (14) days of the entry of this Memorandum Opinion and Order. By Jack's own filing seeking an extension of time, it is evident that he received the Court's January 11, 2017 Memorandum Order directing him to file a particularized complaint prior to February 3, 2017. Thus, Jack has had more than adequate time to file a particularized complaint, but as of

yet, has not done so. Nevertheless, the Court affords Jack one more opportunity to comply with its directives.

The Clerk is directed to send a copy of this Memorandum Opinion to Jack.

Date: March 21, 2017
Richmond, Virginia

Robert E. Payne
Senior United States District Judge